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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/577,090	01/19/2007	Tobias Fackler	100728-53-WCG	4311
27386	7590	03/24/2010	EXAMINER	
GERSTENZANG, WILLIAM C. NORRIS MCLAUGHLIN & MARCUS, PA 875 THIRD AVE, 8TH FLOOR NEW YORK, NY 10022			NELSON, MICHAEL B	
			ART UNIT	PAPER NUMBER
			1794	
			MAIL DATE	DELIVERY MODE
			03/24/2010	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/577,090	Applicant(s) FACKLER ET AL.	
	Examiner MICHAEL B. NELSON	Art Unit 1794	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 19 January 2010.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-24 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-24 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

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DETAILED ACTION

Response to Amendment

1. Applicant's amendments filed on 01/19/10 have been entered. Claims 1-24 are currently under examination on the merits. The same rejections as were used in the previous office action are maintained.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

4. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later

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invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

5. Claims 1-24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Reiners et al. (WO00/013866), see English language equivalent U.S. 7,070,852, in view of Park (WO00/015697), see English language equivalent U.S. 6,720,362.

6. Regarding claims 1, 5, 6 and 19, Reiners et al. discloses almost identical claims. Compare claim 1 of Reiners et al. to instant claim 1. Foamed propylene homopolymer is a polyolefin foam. Layer B disclosed as being 100% the polymer from layer A (C5, L1-10), heterophase copolymers are disclosed (C2, L20) and Layer C is disclosed as being polypropylene (C5, L5-10). The only limitations not disclosed in Reiners et al. are the amount of nucleating agent and the type of nucleating agent.

7. Park, which is also directed at polypropylene foams (See Abstract and C3, L15-35) discloses that nucleating agents (talc) are useful for controlling the pore size of the foam and can be used at amounts ranging from 0.01-5 parts per hundred (i.e. 0-5%) (C5, L1-15). Hence it would have been obvious to have used the amount of nucleating agents as set forth in Park in the foam layer of Reiners et al. for the purposes of controlling the cell size of the layer.

8. Regarding claims 2-4, see Reiners et al. claims 2-4 respectively.

9. Regarding claims 7-10, see Reiners et al. claims 5-9 respectively.

10. Regarding claims 11, see Reiners et al. claim 11.

11. Regarding claims 12 and 23, see Reiners et al. claim 13.

12. Regarding claims 13-17 and 24, see Reiners et al. claims 16-20.

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13. Regarding claims 18, Layer B disclosed as being 100% the polymer from layer A (C5, L1-10), heterophase copolymers are disclosed (C2, L20)
14. Regarding claim 20, Layer C is disclosed as being polypropylene (C5, L5-10).
15. Regarding claim 21, see Reiners et al. claim 10.
16. Regarding claim 22, see Reiners et al. claim 12.

Response to Arguments

17. Applicant's arguments of 01/19/10 have been considered but are not persuasive.
18. Applicant argues that the primary reference does not disclose the instant nucleating agents; however the examiner notes that the secondary reference teaches why it would be obvious to use nucleating agents and control their amount in order to control the cell size of the foamed layer.
19. Applicant argues that their inventive packaging laminate enables "shorter cycle times" however this is not claimed and is not properly supported with evidence showing that it is a result of one of the claimed structural aspects which constitutes unexpected results. Likewise, the argued "mechanical strength and rigidity" is not claimed and is not adequately argued as an unexpected result. The unexpected results must be argued in comparison to the rejection on the record, which is not just the Reiners et al. reference but also contains the secondary reference which teaches the instantly claimed nucleating agent range.
20. Applicant alleges that these properties are the result of the instantly claimed nucleating agents; however the prior art discloses that such a range was obvious to one adjusting the cell size. Just because the prior art does not mention shorter cycle times and rigidity as the reasons for controlling the amount of nucleating agents does not mean that those properties would not

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result from a film whose nucleating agent component was controlled for some other reason to fall within the claimed range.

21. Regarding the form-fill-seal arguments, the prior art discloses the use of such a machine and no other limitations, as to the cycle time of the machine, are present in the claims. If they were, they would be considered product by process limitations.

Conclusion

22. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

23. Any inquiry concerning this communication or earlier communications from the examiner should be directed to **MICHAEL B. NELSON** whose telephone number is (571) 270-3877. The examiner can normally be reached on Monday through Thursday 6AM-4:30PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David Sample can be reached on (571) 272-1376. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Patricia L. Nordmeyer/
Primary Examiner, Art Unit 1794

/MN/
03/22/10